

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
VONAGE HOLDINGS	)	WC Docket No. 03-211
CORPORATION	)	
	)	
Petition for Declaratory Ruling	)	
Concerning an Order of the Minnesota	)	
Public Utilities Commission	)	

**Comments of  
Communications Workers of America**

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## EXECUTIVE SUMMARY

The Commission should deny the Vonage petition requesting preemption of a Minnesota Public Utilities Commission order requiring Vonage to comply with state laws governing providers of telephone service.

Vonage advertises itself as an “all-inclusive home phone service that replaces your current phone company.” Vonage proclaims on its web site: “You pick up the phone, hear the dial tone and dial the telephone number of your choice.” Vonage offers local and long-distance communication services to customers using Voice over Internet Protocol (“VoIP”). Although Vonage seeks to portray its VoIP voice service offering as an “information service,” the service that Vonage provides to the public is a simple substitute for basic voice communication services.

In the *Universal Service Report*, the Commission addressed the proper regulatory treatment of VoIP. The Commission identified computer-to-computer IP telephony as an “information service.” Regarding phone-to-phone IP telephony, the Commission repeated at least eight times that it is a telecommunications service. Vonage itself admits to meeting key criteria of a phone-to-phone IP telephony telecommunications service.

The definitional issues raised by the Vonage hybrid service, and other forms of VoIP, are complex. Decisions on the proper regulatory treatment of the Vonage service, and other VoIP services, will have profound implications for many important communications policy goals set forth in the Communications Act of 1934 (as amended) and Commission rules. These include obligations for universal service support, support of telecommunications relay services (TRS), access for people with disabilities, intercarrier compensation (access charges), public safety obligations such as E911 and CALEA, privacy protections, advance notice of termination of

service, and other consumer protections.

The Commission must address this new world of IP voice telephony in a comprehensive rulemaking that adopts rules to ensure that all providers of voice telephony, regardless of the technology or functionality employed, contribute in an equitable manner to these goals. The rulemaking must also address the appropriate role for state Commissions in regulating an intrastate voice telephony service, regardless of the technology or functionality employed. Because these issues cannot be addressed in the context of the instant Petition, the Commission should deny the Vonage Petition and move expeditiously to open a comprehensive rulemaking on VoIP.

Until the Commission has reached a decision on these broad goals, it is not unreasonable to permit Minnesota to require certification and the provision of a 911 plan by Vonage.

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## **I. INTRODUCTION**

The Communications Workers of America (“CWA”) submits these comments in response to the Commission’s Public Notice seeking comments on a Petition for Declaratory Ruling submitted by Vonage Holdings Corporation (“Vonage”). Vonage requests Commission preemption of an order of the Minnesota Public Utilities Commission (“Minnesota Commission”) requiring Vonage to comply with state laws governing providers of telephone service. Vonage claims that because it provides a form of Voice over Internet Protocol (“VoIP”) service, it is a provider of information services, not telecommunications, and therefore is not subject to regulation as a provider of telephone service. Further, Vonage states that preemption is necessary because the Internet cannot be separated into interstate and intrastate components. Additionally, Vonage requests preemption of certain 911 obligations imposed by the Minnesota Commission.<sup>1</sup>

CWA is a labor organization representing approximately 700,000 workers employed in telecommunications, publishing, manufacturing, health care, state and local government, and other public and private organizations. CWA members work in all segments of the telecommunications industry, including local and long-distance telephony, cable, wireless, and Internet access. CWA members are also consumers of telecommunications services.

The Commission should deny the Vonage Petition. The issue is not ripe for a Declaratory Ruling. The Vonage Petition raises many complex issues that have broad implications for the future of our nation’s communications system that must be addressed in the context of a comprehensive rulemaking that develops a new regulatory framework for the provision of voice

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<sup>1</sup> FCC Public Notice, “Pleading Cycle Established for Comments on Vonage Petition for Declaratory Ruling,” WC Docket No. 03-211, Sept. 26, 2003.

telephony over the Internet.<sup>2</sup>

As Chairman Powell noted recently, VoIP “has the seeds of completely tearing apart the existing regulatory regime.”<sup>3</sup> Indeed, as the Commission acknowledged in its *Universal Service Report*, provision of voice telephony using Internet protocols does not fit neatly into the regulatory regime that differentiates between regulated “telecommunications services” and unregulated “information services.”<sup>4</sup> Traditional voice telephony carriers are considered “telecommunications carriers” subject to Title II common carrier regulation for interstate services, and state regulation for intrastate services. Telecommunications carriers are subject to numerous obligations, including, but not limited to, universal service support, support of telecommunications relay services (TRS), access for people with disabilities, intercarrier compensation (access charges), and public safety obligations such as E911 and CALEA. Information providers are not subject to these obligations.<sup>5</sup>

Trying to fit VoIP service into this regulatory regime doesn’t work. On the one hand, Vonage markets local and long-distance voice wireline telephony service to consumers. In this sense, it offers a service that is no different from that offered by traditional voice telephony carriers. Vonage proclaims on its website, “Vonage works just like the telephone you have in your home today. You pick up the phone, dial the number, and it connects to whom you are calling.”<sup>6</sup> On the other hand, Vonage provides this voice telephony service using a form of VoIP technology that “‘bridges’ the incompatible formats of the Internet and the Public Switched Telephone

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<sup>2</sup> Chairman Michael C. Powell recently announced his intention to open such an inquiry. See Ted Hearn, “FCC to Study How to Treat VoIP Services,” *MultiChannel News*, Oct. 6, 2003.

<sup>3</sup> *Id.*

<sup>4</sup> In the Matter of Federal-State Joint Board on Universal Service, Report to Congress (“Universal Service Report”), CC Docket No. 96-45, 13 FCC Rcd 11501, 1998, ¶¶ 83, 90.

<sup>5</sup> *Id.*, ¶ 91, n. 189.

Network.”<sup>7</sup> The Vonage service substitutes for voice telephony, and it does so by means of an application that allows “communication between users of the Internet and users of the public switched telephone network.”<sup>8</sup>

The definitional issues raised by the Vonage hybrid service, and other forms of VoIP, are complex. Decisions on the proper regulatory treatment of the Vonage service, and other VoIP services, have profound implications for many important communications policy goals set forth in the Communications Act of 1934 (as amended) and Commission rules.

Commission preemption of state regulation of Vonage, and other VoIP carriers using similar or other forms of technology, prior to a comprehensive rulemaking on the proper regulatory treatment of VoIP, is therefore unwarranted and premature. First, Commission preemption of state authority over VoIP prior to regulatory reform that would require all providers of voice telephony service, regardless of the technology or functionality used, to meet the obligations currently prescribed for telecommunications carriers would undermine current systems of support for universal service, access for people with disabilities, public safety, and other important policy goals. Second, preemption would open a multitude of arbitrage opportunities advantaging VoIP carriers who are not subject to fees and charges that are imposed on traditional wireline voice telephony carriers. Third, preemption of Vonage’s 911 obligations would do serious harm to public safety, of particular concern in the post-September 11 environment.

Vonage argues that the relief it seeks in this Petition is narrowly tailored to its specific form of VoIP and would be without precedent for other types of VoIP services. In fact, the

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<sup>6</sup> “Vonage: The Broadband Phone Company – How It Works” at [http://www.vonage.com/learn\\_howitworks.php](http://www.vonage.com/learn_howitworks.php) (downloaded Oct. 26, 2003) (“Vonage web site”).

<sup>7</sup> In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, Petition for Declaratory Ruling (“Vonage Petition”), Sept. 22, 2003, iii.

Vonage Petition raises complex and far-reaching policy issues that could well determine the future of our nation-wide communications system as carriers employing a variety of technologies and functionalities market voice services to customers over IP networks. The Commission must address this new world of IP voice telephony in a comprehensive rulemaking that adopts rules to ensure that all providers of voice telephony, regardless of the technology or functionality employed, contribute in an equitable manner to the advancement of universal service, public safety, disability access, and other critical policy goals. The rulemaking must also address the appropriate role for state Commissions in regulating an intrastate voice telephony service, regardless of the technology or functionality employed. Because these issues cannot be addressed in the context of the instant Petition, the Commission should deny the Vonage Petition and move expeditiously to open a comprehensive rulemaking on VoIP.

## **II. VONAGE VoIP SERVICE DOES NOT FIT NEATLY INTO THE DEFINITION OF EITHER A TELECOMMUNICATIONS SERVICE OR AN INFORMATION SERVICE**

Vonage states on its web site: “Vonage is an all-inclusive home phone service that replaces your current phone company.”<sup>9</sup> Vonage offers unlimited local and long-distance calling as well as features such as Caller ID, Call Waiting, and Voice Mail. The customer uses an ordinary touch-tone phone to make calls and carry on conversations. According to the Minnesota Commission, “Although the phone is plugged into an MTA [Multimedia Terminal Adapter] router which, in turn, is plugged into the modem, the consumer is provided with service that is functionally the same as any other telephone service. Further, the Vonage service intersects with

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<sup>8</sup> *Id.*, 7..

<sup>9</sup> Vonage web site.



the public switched telephone network.”<sup>10</sup> Because Vonage offers a service that is functionally equivalent to local voice telephony, the Minnesota Commission concluded that Vonage service is a telephone service, subject to Minnesota Statutes and Rules. As such, the Minnesota Commission required Vonage to meet minimal regulatory requirements of certification and provisioning and remittance of 911 service fees. The Minnesota Commission expressly did not impose “tariff regulation” on Vonage.<sup>11</sup>

While Vonage acknowledges that the service it provides “resembles traditional telephone service in some respects,”<sup>12</sup> it claims that what it really sells is an “application” for users of the Internet.”<sup>13</sup> Vonage argues that it is not a telephone or “telecommunications” service but rather is properly classified as an “enhanced service” under the Commission’s *Computer II* test and an “information service” under the definitions in the Telecommunications Act of 1996.<sup>14</sup>

Vonage describes the technology underlying its VoIP “DigitalVoice” service as follows. Most customers attach a specialized computer (called a Multimedia Terminal Adapter, or “MTA”, also identified as an “ATA”) to their telephone and modem. The MTA performs digital-

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<sup>10</sup> Minnesota Public Utilities Commission, Order Finding Jurisdiction and Requiring Compliance, In the Matter of the Complaint of the Minnesota Department of Commerce Against Vonage Holding Corp Regarding Lack of Authority to Operate in Minnesota (“Minnesota Vonage Order”), Docket No. P-6214/C-03-108, Sept. 11, 2003, 8.

<sup>11</sup> *Id.*

<sup>12</sup> Vonage Petition, 4.

<sup>13</sup> *Id.*, 12.

<sup>14</sup> *Id.* Under *Computer II*, the Commission defined unregulated “enhanced services” as “services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber’s transmitted information; provide the subscriber additional, different or restructured information; or involve subscriber interaction with stored information. 47 C.F.R. § 64.702(a). In *Computer II*, the Commission defined “basic service” as “the offering, on a common carrier basis, of pure ‘transmission capacity for the movement of information.’” *Computer II Final Decision*, 77 FCC 2d at 419, ¶ 93. The Telecommunications Act of 1996 defined “telecommunications” as “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent or received.” 47 U.S.C. § 153(44). The Telecommunications Act of 1996 defined “information service” as “the offering of capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications...but does not include any use of any such capability for the management, control or operation of a telecommunications system of the

to-audio and audio-to-digital conversions. Other customers use “native IP phones” which include both a telephone handset and a digital signal-processing unit in an integrated device. Still others configure their personal computer with microphone and speakers, using a software application to perform the digital-to-analog conversion. The customer places and receives “calls” to anyone with a telephone number by establishing a connection over the Internet to a Vonage server. The Vonage service uses computerized media “gateways” that provide an interface between the Internet and the Public Switched Telephone Network (PSTN). The Vonage service includes protocol conversion between the incompatible digital formats of the Internet (which uses IP) and the PSTN (which uses TDM). According to Vonage, “the distinguishing characteristic of the Vonage service is the conversion of data to permit communications between users of the Internet and users of the PSTN.”<sup>15</sup>

Vonage argues that its VoIP service is properly classified as an information service because it “processes” and “transforms” the information transmitted by its users. According to Vonage, it provides an “application” over the Internet, not a voice service.<sup>16</sup>

In the *Universal Service Report*, the Commission addressed the proper regulatory treatment of VoIP. It reached only tentative conclusions. The Commission distinguished between computer-to-computer and phone-to-phone IP telephony. The Commission identified computer-to-computer IP telephony as an “information service.” Regarding phone-to-phone IP telephony, the Commission repeated at least eight times in the *Universal Service Report* that it is a telecommunications service. “The record currently before us suggests that certain forms of ‘phone-to-phone’ IP telephony services lack the characteristics that would render them

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management of a telecommunications service.” 47 U.S.C. § 153(20).

<sup>15</sup> *Id.*, 4-7.

‘information services’ within the meaning of the statute, and instead bear the characteristics of ‘telecommunications services.’”<sup>17</sup>

In the *Universal Service Report*, the Commission described phone-to-phone IP telephony as a service provided “through ‘gateways’ that enable applications originating and/or terminating on the PSTN.” The Commission defined “gateways” as “computers that transform the circuit-switched voice signal into IP packets, and vice versa, and perform associated signaling, control, and address translation functions. The voice communication can be transmitted along with other data on the ‘public’ Internet....”<sup>18</sup> This description includes many characteristics of the Vonage VoIP service. The Vonage service allows communication between a caller using its VoIP service and end users that either originate or terminate calls on the PSTN by means of Vonage “gateways” that provide an interface between the Internet and the PSTN. The interface performs protocol conversion between the incompatible formats of the two networks for termination on the PSTN.<sup>19</sup>

In the *Universal Service Report*, the Commission provided a tentative definition of “phone-to-phone” IP telephony in which the provider meets these four conditions: 1) it holds itself out as providing voice telephony or facsimile transmission services; 2) it does not require the customer to use CPE different from that CPE necessary to place an ordinary touch-tone call (or facsimile transmission) over the public switched telephone network; 3) it allows the customer to call telephone numbers assigned in accordance with the North American Numbering Plan, and associated international agreements; and 4) it transmits customer information without net change

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<sup>16</sup> *Id.*, 12-13.

<sup>17</sup> Universal Service Report, ¶¶ 3, 14, 55, 83, 90, 98, 101, 105.

<sup>18</sup> Universal Service Report, ¶ 84.

<sup>19</sup> Vonage Petition, 7. Vonage also provides “computer-to-computer” communications when calls are placed from

in form or content.<sup>20</sup>

As a first matter, the Commission does not state that the carrier must meet all four characteristics in order to be classified as a VoIP “phone-to-phone” provider. Vonage itself acknowledges that its service meets the first and third criteria; i.e. Vonage customers use the service as an alternative to placing conventional telephone calls, and can place “calls” to ordinary telephone numbers.<sup>21</sup> While the Vonage service on its face does not seem to meet the second criteria (not requiring additional CPE other than a telephone handset or fax machine), the Commission did not expressly address a situation in which a VoIP service requires *both* traditional CPE and additional CPE (such as a computer). Facsimile transmission, which is included in the second criteria, requires specialized CPE.

Regarding the fourth criteria (transmission of customer information without change in form or content), the Commission in the *Non-Accounting Safeguards Order* concluded that “certain protocol processing services that result in no *net* protocol conversion to the end user are classified as basic services; those services are deemed telecommunications services” (emphasis added).<sup>22</sup> Among the protocol processing services that the Commission identified that result in “no net protocol conversion” is “protocol processing in connection with the introduction of a new basic network technology (which requires protocol conversion to maintain compatibility with existing CPE).”<sup>23</sup> When a Vonage customer calls a non-Vonage customer, the Vonage service performs protocol processing at its “gateways” to achieve compatibility with existing CPE of the non-Vonage customer. However, there is no net protocol conversion. The call

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one Vonage customer to another Vonage customer.

<sup>20</sup> *Id.*, 88.

<sup>21</sup> Vonage Petition, 17.

<sup>22</sup> *Id.*, ¶ 50. See *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21958, ¶ 107.

originates as an audio voice signal and ends as an audio voice signal.

In sum, Vonage markets itself as a service that replaces your home telephone company. It is also a voice application that rides on the public Internet. It does not fit neatly into the definition of either a telecommunications or an information service. Therefore, the Commission cannot preempt state regulation of the service on the basis that it is an information service. Moreover, as we discuss below, preemption in the absence of regulatory reform would cause irreparable harm to other goals of the Communications Act and Commission rules.

### **III. THE COMMISSION MUST CREATE A REGULATORY FRAMEWORK THAT IMPOSES EQUIVALENT REGULATORY OBLIGATIONS ON ALL VOICE TELEPHONY PROVIDERS, REGARDLESS OF THE TECHNOLOGY**

The Telecommunications Act and Commission rules impose various important requirements on providers of telecommunications. These obligations include, but are not limited to, contribution to universal service mechanisms, payment of access charges (for interstate service), compliance with standards promulgated pursuant to section 255 for persons with disabilities, provision of telecommunications relay service, CALEA public safety assistance requirements, customer proprietary network information (CPNI) rules, section 214 authorization requirements for international service, interconnection provisions for international service, advance notification of intent to discontinue service, and payment of certain fees, reporting, and filing requirements.<sup>24</sup>

States also impose obligations on the intrastate services of telephone companies, including, but not limited to, obtaining a certificate of authority, contributions to universal service mechanisms, payment of access charges (for intrastate toll services), 911 public safety

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<sup>23</sup> *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21955-58, ¶¶ 104-07.

requirements, filing of rates, tolls, and price lists, adherence to service quality standards, privacy and other consumer protections, and advance notification of intent to discontinue service. (In addition, incumbent local exchange carriers are subject to an array of regulation, including rate regulation, which typically are not imposed on competitive local exchange carriers). In the instant case, the Minnesota Commission imposed minimal regulation on Vonage when it ruled that it was a telephone company subject to jurisdiction under Minnesota statute and regulation. The Minnesota Commission ordered Vonage to obtain a certificate of authority, to submit a 911 plan, and to remit 911 fees.<sup>25</sup>

Regardless of the regulatory classification of VoIP services, the Commission must ensure that *all* providers of voice telephony services are required to meet the social obligations imposed on telecommunications carriers. Failure to do so would undermine important goals that Congress mandated in the Telecommunications Act of 1996 and the Commission has incorporated in its rules, including universal service support, access for people with disabilities, and public safety requirements. Moreover, failure to impose equivalent regulatory obligations on all providers of voice telephony would cause distortion in the marketplace. In the *Universal Service Report*, the Commission acknowledged that exempting VoIP carriers from requirements imposed on other wireline voice telephony providers would open up arbitrage opportunities and undermine universal service support mechanisms. In its discussion of universal service obligations of VoIP phone-to-phone carriers, the Commission wrote:

We are mindful that, in order to promote equity and efficiency, we should avoid creating regulatory distinctions based purely on technology. Congress did not limit ‘telecommunications’ to circuit-switched wireline transmission, but instead defined that term on the basis of the essential functionality provided to users.

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<sup>24</sup> Universal Service Report, ¶ 91 and n. 189.

<sup>25</sup> Minnesota Vonage order, 8.

...If such [phone-to-phone IP telephony service] providers are exempt from universal service contribution requirements, users and carriers will have an incentive to modify networks to shift traffic to Internet protocol and thereby avoid paying into the universal service fund, or in the near term, the universal service contributions embedded in interstate access charges. If that occurs, it could increase the burden on the more limited set of companies still required to contribute. Such a scenario, if allowed to manifest itself, could well undermine universal service.<sup>26</sup>

Further, the Commission recognized that “carriers with universal service contribution obligations should not be at a competitive disadvantage in relation to providers on the basis that they do not have such obligations.” This approach, the Commission noted, is consistent with its principle of competitive neutrality articulated in its *Universal Service Order*.<sup>27</sup>

The Commission must resolve these issues in the context of a comprehensive VoIP rulemaking, not in the instant proceeding. In the context of such a rulemaking, the Commission must develop mechanisms to ensure that all voice telephony carriers, including those providing voice telephony over the Internet, are subject to similar regulatory requirements. Preemption of state jurisdiction over Vonage or other VoIP carriers prior to development of a new regulatory framework would pose irreparable harm to important policy goals. Further, it would distort the marketplace by allowing VoIP carriers to compete, not on the basis of superior technology or service, but by avoiding costs associated with these requirements.

#### **IV. COMMISSION PREEMPTION OF MINNESOTA’S 911 REQUIREMENTS WOULD HARM PUBLIC SAFETY**

The protection of public safety is a traditional responsibility of state governments, and states have a legitimate role to establish procedures for emergency response centers. The state of Minnesota requires each competitive local exchange carrier to submit a plan detailing how it will

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<sup>26</sup> Universal Service Order, 98.

provide 911 service consistent with Minnesota law that is “comparable” to the service provided by the incumbent local exchange carrier (“ILEC”). Minnesota 911 standards prohibit the routing of emergency calls by means other than the native 911 network, except in limited circumstances and only with the permission of the 911 Board and other public safety agencies. A competitive local exchange carrier (“CLEC”) cannot begin providing local service until the Commission approves the 911 plan. According to the Minnesota Department of Commerce (DOC) and the Minnesota Commission, Vonage failed to provide a 911 plan to the state. Minnesota law also requires each local telephone company to collect 911 fees from subscribers and to remit those fees to the state. Vonage failed to remit 911 fees.<sup>28</sup>

Vonage seeks Commission preemption of the Minnesota requirement that 911 service be “comparable” to ILEC service. Vonage states that this would be technically impossible since it does not have a means to identify the actual geographic location of its customers at the time they place a call. As an alternative, Vonage states that it requires customers to register their location through a web page before they can use 911 dialing, and then routes calls to a public safety access point (PSAP) serving the customer’s registered location.<sup>29</sup>

The Commission should not grant Vonage’s request. First, there may be a range of technical solutions that would allow Vonage to provide “comparable” 911 service that would identify the location of the caller. To cite only one example, Vonage could install a Global Positioning System chip into its MTA router. The Minnesota DOC states that it contacted other certificated

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<sup>27</sup> *Id.*, ¶ 133. See also Universal Service Order, 12 FCC Rcd at 8801, ¶ 47.

<sup>28</sup> Complaint of the Minnesota Department of Commerce, Request for Temporary Relief and Request for an Expedited Proceeding, In the Matter of the Complaint of the Minnesota Department of Commerce Against Vonage Holding Corp Regarding Lack of Authority to Operate in Minnesota (“DOC Complaint”), Docket No. P6214/C-03-108, July 15, 2003, pages 5-9 (See Vonage Petition, Exhibit 2).

<sup>29</sup> Vonage Petition, 8.



telecommunications carriers offering VoIP who reported that they have provided 911 service in compliance with state 911 requirements and whose plans were approved by the 911 Board and the Minnesota Commission.<sup>30</sup>

According to the Minnesota DOC, Vonage's ad hoc 911 system fails to meet minimal safety standards.

Administrative PSAP numbers of the type Vonage is routing 911 calls to are not equipped to answer 911 emergency calls. Administrative PSAP numbers do not have the ability to receive ANI/ALI information, which automatically displays the number the caller is calling from, as well as the address which they are calling from, in the event that the caller is unable to speak. In addition, since administrative numbers are not equipped to handle emergency calls, they are not answered on a priority basis, may not be staffed 24 hours a day, and/or the recipient of the call may not be equipped or trained to summon emergency services to the caller.<sup>31</sup>

Moreover, Vonage never contacted the Minnesota Commission, Minnesota DOC, 911 Board, or any other state government agency to discuss its routing of 911 calls. There is no indication that Vonage contacted any state agency seeking temporary waiver of the "comparable" 911 standard to give it time to overcome its technical limitations.

Further, Vonage argues that it is constrained from offering "comparable" 911 service because, as an information provider, it has been unable to interconnect to the incumbents' E911 trunks in the absence of a legal duty that requires the incumbent to offer such interconnection. Here, Vonage wants to have it both ways – the rights of a telecommunications carrier without the obligations. Certainly, Vonage can negotiate an interconnection agreement with the incumbent to interconnect with E911 trunks for a fee. But apparently that would impose costs on the Vonage service that it does not want to incur, at the expense of the safety of its customers.

Vonage offers no defense for its refusal to remit 911 fees.

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<sup>30</sup> DOC Complaint, ¶ 31.

The Commission should reject Vonage's request for preemption of Minnesota 911 requirements. The state has jurisdiction over voice wireline 911. Preemption would interfere with the state's ability to carry out this important public safety function. There appears to be mechanisms to resolve the technical difficulties that Vonage raises concerning its provision of enhanced 911. However, the appropriate place to address any concerns about technical limitations or access to incumbents' E911 trunks is before state regulators, not this Commission.

**V. STATE COMMISSION JURISDICTION OVER INTRASTATE VOICE COMMUNICATIONS DOES NOT EVAPORATE WITH VoIP VOICE SERVICE**

Section 152(b) of the Communications Act of 1934 (as amended) expressly grants state jurisdiction over intrastate communications.<sup>32</sup> The Commission has explicitly stated that federal preemption of state regulation should be narrowly tailored to specific state actions that are likely to interfere with federal policies.<sup>33</sup> Vonage fails to make its case that state jurisdiction over the intrastate portion of its VoIP service interferes with federal policy to foster innovation and growth of the Internet. The Minnesota Commission imposed minimal requirements on Vonage: certification, submission of a "comparable" 911 plan, and remittance of 911 fees. There is nothing in these regulatory requirements that would thwart growth of this innovative service, in particular, nor of the Internet, in general.

Moreover, there are sound public policy reasons to support Minnesota's regulation of

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<sup>31</sup> *Id.*, ¶ 30.

<sup>32</sup> 47 U.S.C. § 151(b). "...nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier...."

<sup>33</sup> "Preemption of state regulation in this area should be as narrow as possible to accommodate differing state views while preserving federal goals." In the Matter of Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards ("Computer III Remand"), 6 FCC RCD 7571 (1991) ¶ 121. See also *California v. FCC*, 905 F2d at 1243 ("California I"). "FCC bears the burden of justifying its entire preemption order by demonstrating that the order is narrowly tailored to preempt *only* such state regulations as

Vonage VoIP service, and state regulation of VoIP local service more generally. In the instant proceeding, Minnesota notes that providers of voice telephony, such as Vonage, must demonstrate “technical, managerial, and financial resources” in order to obtain certification to operate in the state. They must also demonstrate that their provision of telephone service is “consistent with fair and reasonable competition, universal service, the provision of affordable telephone service at a quality consistent with commission rules.”<sup>34</sup> Minnesota imposes other requirements on telephone companies, including privacy protections, advance notice of termination of service, and other consumer protections.<sup>35</sup> As already discussed, Minnesota requires telephone companies to provide quality 911 service to protect public safety. Each of these provisions protects the public interest in reliable, affordable telephone service. One need only recall the chaos that accompanied the cancellation with little advance notice of @Home broadband Internet access service, or the fears that WorldCom’s bankruptcy would disrupt telecommunications service, to underscore the importance of these critical state regulatory functions and requirements.

To be sure, VoIP local telephony raises complicated jurisdictional issues related to contributions for universal service support and payment of access charges. Vonage correctly points out the difficulty in separating VoIP calls into intrastate and interstate portions. The Commission must consider these issues in a comprehensive VoIP rulemaking.

However, the “any distance” nature of the Internet does not require preemption of state regulation prior to a more comprehensive rulemaking to determine the appropriate role for state Commissions in regulating VoIP local voice service. In fact, preemption would leave a

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would negate valid FCC regulatory goals.”

<sup>34</sup> Minnesota Statutes § 237.16 sub. 1(b). *See* Minnesota DOC Complaint ¶ 36.

serious vacuum that would leave many consumers without any basic protections. Therefore, the Commission should not preempt state regulation of Vonage service.

## **VI. CONCLUSION**

VoIP explodes the regulatory distinction between “telecommunications” and “information services.” VoIP offers a voice service (telecommunications) by means of the Internet. The Commission cannot address the tensions in the current regulatory framework in a piecemeal manner. Preemption of state authority over VoIP local service would have negative impact on many important policy goals, including universal service, access for people with disabilities, and public safety. Therefore, the Commission should deny the Vonage Petition and move expeditiously to conduct a comprehensive rulemaking on VoIP. Such a rulemaking should lead to adoption of a new regulatory framework consistent with the goal of universal, affordable, quality service broadband for all.

Respectfully Submitted,

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Dated: October 27, 2003

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<sup>35</sup> Vonage policies fail to meet these requirements of Minnesota statute. Minnesota DOC Complaint, ¶ 34.